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Attorneys for Defendants
LANCE TOKUDA, JIA SHEN, AND NETPICKLE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ICONIX, INC.,

Plaintiff,

v.

LANCE TOKUDA, JIA SHEN,
NETPICKLE, INC.,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. C-06-02201 SBA (JCS)

**STIPULATED PROPOSED
PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
12 that will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner generated, stored, or maintained (including, among other things,
18 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
19 responses to discovery in this matter.

20 2.3 "Confidential" Information or Items: information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under F.R.Civ.P. 26(c).

23 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:
24 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
25 nonparty would create a substantial risk of serious injury that could not be avoided by less
26 restrictive means. Alternatively, the designation "Confidential – Attorneys' Eyes Only" has the
27 same meaning under this paragraph.
28

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3
4 **4. DURATION**

5 Even after the termination of this litigation, the confidentiality obligations imposed by this
6 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
7 otherwise directs.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
10 Party or non-party that designates information or items for protection under this Order must take
11 care to limit any such designation to specific material that qualifies under the appropriate
12 standards. A Designating Party must take care to designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify – so that other portions
14 of the material, documents, items, or communications for which protection is not warranted are
15 not swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
18 unnecessarily encumber or retard the case development process, or to impose unnecessary
19 expenses and burdens on other parties), expose the Designating Party to sanctions.

20 If it comes to a Party's or a non-party's attention that information or items that it
21 designated for protection do not qualify for protection at all, or do not qualify for the level of
22 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
23 withdrawing the mistaken designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
26 material that qualifies for protection under this Order must be clearly so designated before the
27 material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
4 or bottom, at the election of the Producing Party, of each page that contains protected material. If
5 only a portion or portions of the material on a page qualifies for protection, the Producing Party
6 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins) and must specify, for each portion, the level of protection being asserted (either
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 A Party or non-party that makes original documents or materials available
10 for inspection need not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
14 documents it wants copied and produced, the Producing Party must determine which documents,
15 or portions thereof, qualify for protection under this Order, then, before producing the specified
16 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top or bottom, at the
18 election of the Producing Party, of each page that contains Protected Material. If only a portion
19 or portions of the material on a page qualifies for protection, the Producing Party also must
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
21 must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”
22 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

23 (b) for testimony given in deposition or in other pretrial or trial
24 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
25 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
26 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
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1 testimony that is entitled to protection, and when it appears that substantial portions of the
2 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
3 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
4 have up to 20 days to identify the specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
7 are appropriately designated for protection within the 20 days shall be covered by the provisions
8 of this Stipulated Protective Order.

9
10 Transcript pages containing Protected Material must be separately bound
11 by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”
12 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
13 nonparty offering or sponsoring the witness or presenting the testimony.

14 (c) for information produced in some form other than documentary,
15 and for any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the legend
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
18 portions of the information or item warrant protection, the Producing Party, to the extent
19 practicable, shall identify the protected portions, specifying whether they qualify as
20 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
22 to designate qualified information or items as “Confidential” or “Highly Confidential –
23 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
24 protection under this Order for such material. If material is appropriately designated as
25 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
26 produced, the Receiving Party, on timely notification of the designation, must make reasonable
27 efforts to assure that the material is treated in accordance with the provisions of this Order.
28

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 11, below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized under
10 this Order.

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated CONFIDENTIAL only to:

14 (a) the Receiving Party's Outside Counsel of record in this action, as
15 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
16 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
17 attached hereto as Exhibit A;

18 (b) the officers, directors, and employees (including House Counsel) of
19 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
20 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

21 (c) experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
23 Bound by Protective Order" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
27 Bound by Protective Order" (Exhibit A);
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(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A) and who are neither current nor former employees of either party;

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately

1 and in no event more than three court days after receiving the subpoena or order. Such
2 notification must include a copy of the subpoena or court order.

3 The Receiving Party also must immediately inform in writing the Party who caused the
4 subpoena or order to issue in the other litigation that some or all the material covered by the
5 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
6 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
7 caused the subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested parties to the existence of
9 this Protective Order and to afford the Designating Party in this case an opportunity to try to
10 protect its confidentiality interests in the court from which the subpoena or order issued. The
11 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
12 confidential material – and nothing in these provisions should be construed as authorizing or
13 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

14 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
16 Material to any person or in any circumstance not authorized under this Stipulated Protective
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
18 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
19 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
21 Be Bound” that is attached hereto as Exhibit A.

22 9.1 INADVERTENT PRODUCTION.

23 Counsel shall exert their best efforts to identify materials protected by the attorney-client
24 privilege or the work product doctrine prior to the disclosure of any such materials or
25 information. The inadvertent production of any document or thing shall be without prejudice to
26 any claim that such material is protected by the attorney-client privilege or protected from
27 discovery as work product, and no Producing Party shall be held to have waived any rights
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1 thereunder by inadvertent production. If a Producing Party discovers that materials protected by
2 the attorney-client privilege or work product doctrine have been inadvertently produced, counsel
3 for the Producing Party shall promptly give notice to counsel for the Receiving Party. If the
4 Producing Party provides such notice, the Receiving Party shall take prompt steps to ensure that
5 all known copies of such material are returned to the Producing Party. The cost, if any, incurred
6 by the Receiving Party for excising such materials shall be borne by the Producing Party. The
7 Parties may afterwards contest such claims of privilege or work product protection as if the
8 materials had not been produced, but shall not assert that a waiver occurred as a result of the
9 production.

10 10. FILING PROTECTED MATERIAL. Without written permission from the
11 Designating Party or a court order secured after appropriate notice to all interested persons, a
12 Party may not file in the public record in this action any Protected Material. A Party that seeks to
13 file under seal any Protected Material must comply with Civil Local Rule 79-5.

14 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
15 Producing Party, within sixty days after the final termination of this action, each Receiving Party
16 must return all Protected Material to the Producing Party. As used in this subdivision, "all
17 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
18 reproducing or capturing any of the Protected Material. With permission in writing from the
19 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
20 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
23 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
24 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
27 correspondence or attorney work product, even if such materials contain Protected Material. Any
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such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: June 13, 2006

MORRISON & FOERSTER LLP

By: s/ Kenneth A. Kuwayti
KENNETH A. KUWAYTI

Attorneys for Plaintiff
ICONIX, INC.

Dated: June 13, 2006

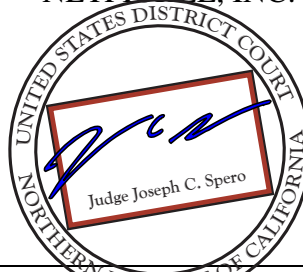
ORRICK, HERRINGTON & SUTCLIFFE, LLP

By: s/ I. Neel Chatterjee
I. NEEL CHATTERJEE

Attorneys for Defendants
LANCE TOKUDA, JIA SHEN and
NETPICKLE, INC.

IT IS SO ORDERED.

Dated: August 15, 2006



Honorable ~~Sandra B. Armstrong~~
United States District Judge Joseph C. Spero
Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for
 the Northern District of California on June __, 2006, in the case of *Iconix v. Tokuda*, Case No. C-
 06-02201 SBA (JCS). I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]